

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35748

SANDRA JONAS,	)	2010 Unpublished Opinion No. 428
	)	
Petitioner-Appellant,	)	Filed: April 14, 2010
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
STATE OF IDAHO,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Respondent.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the Fifth Judicial District, State of Idaho, Jerome County. Hon. Daniel C. Hurlbutt, District Judge.

Order dismissing application for post-conviction relief, affirmed.

Nevin, Benjamin, McKay & Bartlett, LLP; Dennis Benjamin, Boise for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lorello, Deputy Attorney General, Boise, for respondent.

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PERRY, Judge Pro Tem

Sandra Jonas appeals from the district court's order dismissing her application for post-conviction relief without an evidentiary hearing. For the reasons set forth below, we affirm.

I.

FACTS AND PROCEDURE

After Jonas shot and dismembered Meta Marie Jones and enlisted Jonas's seventeen-year-old daughter to help dispose of the body in a canal, Jonas pled guilty to second degree murder. The district court sentenced Jonas to a unified term of life imprisonment, with a minimum period of confinement of twenty-five years. This Court affirmed Jonas's judgment of conviction and sentence. *State v. Jonas*, Docket No. 26014 (Ct. App. December 15, 2000) (unpublished). Jonas filed a motion for new trial under I.C.R. 34 and an affidavit in support thereof. Subsequently, Jonas filed an alternative motion for leave to withdraw her guilty plea, along with a memorandum in support thereof. After a hearing, the district court denied Jonas's motion to withdraw her guilty plea because she had failed to show manifest injustice. This Court

affirmed on the grounds that the district court was without jurisdiction to consider Jonas's untimely motion. *State v. Jonas*, Docket No. 30875 (Ct. App. January 30, 2006) (unpublished).

While the motion to withdraw her guilty plea was pending in the district court, Jonas filed a verified pro se application for post-conviction relief. The state moved to summarily dismiss the application, in part, on the ground that it contained nothing but Jonas's bare and conclusory allegations that were unsupported by any other admissible evidence. After a stay pending the determination of Jonas's appeal on the denial of her motion to withdraw her guilty plea, Jonas was appointed counsel and he filed an amended, but unverified, application for post-conviction relief alleging various conflicts between herself and her trial counsel as well as several grounds of ineffective assistance of counsel which rendered her guilty plea involuntary. The state renewed its motion for summary dismissal. The district court summarily dismissed Jonas's application holding, among other things, that it contained only bare and conclusory allegations. Jonas appeals.

## II. ANALYSIS

Jonas argues that the district court erred by summarily dismissing her application for post-conviction relief because she raised genuine issues of material fact that she received ineffective assistance of counsel and that her guilty plea was involuntary. Additionally, Jonas argues that the district court erred by summarily dismissing her claim that her guilty plea was involuntary without first affording proper notice.

An application for post-conviction relief initiates a civil, rather than criminal, proceeding, governed by the Idaho Rules of Civil Procedure. *State v. Yakovac*, 145 Idaho 437, 443, 180 P.3d 476, 482 (2008); *see also Pizzuto v. State*, 146 Idaho 720, 724, 202 P.3d 642, 646 (2008). Like the plaintiff in a civil action, the applicant must prove by a preponderance of evidence the allegations upon which the request for post-conviction relief is based. I.C. § 19-4907; *Stuart v. State*, 118 Idaho 865, 869, 801 P.2d 1216, 1220 (1990); *Goodwin v. State*, 138 Idaho 269, 271, 61 P.3d 626, 628 (Ct. App. 2002). "An application for post-conviction relief differs from a complaint in an ordinary civil action[.]" *Dunlap v. State*, 141 Idaho 50, 56, 106 P.3d 376, 382 (2004) (quoting *Goodwin*, 138 Idaho at 271, 61 P.3d at 628)). The application must contain much more than "a short and plain statement of the claim" that would suffice for a complaint under I.R.C.P. 8(a)(1). *State v. Payne*, 146 Idaho 548, 560, 199 P.3d 123, 135 (2008); *Goodwin*,

138 Idaho at 271, 61 P.3d at 628. The application must be verified with respect to facts within the personal knowledge of the applicant, and affidavits, records or other evidence supporting its allegations must be attached, or the application must state why such supporting evidence is not included with the application. I.C. § 19-4903. In other words, the application must present or be accompanied by admissible evidence supporting its allegations, or the application will be subject to dismissal.

Idaho Code § 19-4906 authorizes summary dismissal of an application for post-conviction relief, either pursuant to motion of a party or upon the court's own initiative. Summary dismissal of an application is the procedural equivalent of summary judgment under I.R.C.P. 56. "A claim for post-conviction relief will be subject to summary dismissal . . . if the applicant has not presented evidence making a prima facie case as to each essential element of the claims upon which the applicant bears the burden of proof." *DeRushé v. State*, 146 Idaho 599, 603, 200 P.3d 1148, 1152 (2009) (quoting *Berg v. State*, 131 Idaho 517, 518, 960 P.2d 738, 739 (1998)). Thus, summary dismissal is permissible when the applicant's evidence has raised no genuine issue of material fact that, if resolved in the applicant's favor, would entitle the applicant to the requested relief. If such a factual issue is presented, an evidentiary hearing must be conducted. *Payne*, 146 Idaho at 561, 199 P.3d at 136; *Goodwin*, 138 Idaho at 272, 61 P.3d at 629. Summary dismissal of an application for post-conviction relief may be appropriate, however, even where the state does not controvert the applicant's evidence because the court is not required to accept either the applicant's mere conclusory allegations, unsupported by admissible evidence, or the applicant's conclusions of law. *Payne*, 146 Idaho at 561, 199 P.3d at 136; *Roman v. State*, 125 Idaho 644, 647, 873 P.2d 898, 901 (Ct. App. 1994).

On review of dismissal of a post-conviction relief application without an evidentiary hearing, we determine whether a genuine issue of material fact exists based on the pleadings, depositions, and admissions together with any affidavits on file. *Rhoades v. State*, 148 Idaho 247, 220 P.3d 1066 (2009); *Ricca v. State*, 124 Idaho 894, 896, 865 P.2d 985, 987 (Ct. App. 1993). However, "while the underlying facts must be regarded as true, the petitioner's conclusions need not be so accepted." *Rhoades*, 148 Idaho at 250, 220 P.3d at 1069 (quoting *Phillips v. State*, 108 Idaho 405, 407, 700 P.2d 27, 29 (1985)); see also *Hayes v. State*, 146 Idaho 353, 355, 195 P.3d 712, 714 (Ct. App. 2008). As the trial court rather than a jury will be the trier of fact in the event of an evidentiary hearing, summary dismissal is appropriate where the

evidentiary facts are not disputed, despite the possibility of conflicting inferences to be drawn from the facts, for the court alone will be responsible for resolving the conflict between those inferences. *Yakovac*, 145 Idaho at 444, 180 P.3d at 483; *Hayes*, 146 Idaho at 355, 195 P.3d at 714. That is, the judge in a post-conviction action is not constrained to draw inferences in favor of the party opposing the motion for summary disposition but rather is free to arrive at the most probable inferences to be drawn from uncontroverted evidentiary facts. *Id.*

First we consider Jonas's claim that the district court summarily dismissed her application for post-conviction relief on grounds different than those alleged by the state's motion for summary dismissal. Jonas acknowledges that the state's motion for summary dismissal and memorandum in support alleged that all of Jonas's claims failed to raise a genuine issue of material fact, were unsupported by admissible evidence, and were comprised of bare and conclusory allegations. In its order summarily dismissing Jonas's application, the district court held, in part, that Jonas "fails to offer any support for her allegations and as such her assertions are bare and conclusory and this court does not accept them." The district court summarily dismissed Jonas's application because it contained nothing but bare and conclusory allegations and failed to raise any genuine issues of material fact. Therefore, the district court summarily dismissed Jonas's application on the same grounds alleged by the state and no additional notice was required.

Jonas argues that the state was required to specifically identify each of Jonas's claims and give the reasons why each should be summarily dismissed. Because the state failed to so identify Jonas's claim that her guilty plea was involuntary, Jonas argues that she had no notice and the district court erred by summarily dismissing it. Jonas argues that *Buss v. State*, 147 Idaho 514, 211 P.3d 123 (Ct. App. 2009), supports this proposition. Jonas mischaracterizes the holding of *Buss*. In that case, the state's motion asserted that Buss's claims lacked evidentiary support and then argued why the court should dismiss a particular claim which was not actually raised by Buss's application. The district court then summarily dismissed Buss's actual claim, and the majority held that the state's all-inclusive statement followed by a detailed argument of why a particular claim should be summarily dismissed did not provide notice concerning the claim that Buss actually raised. *Id.* at 518, 211 P.3d at 127. In this case, the state's motion did not focus on a particular claim but, rather, argued why Jonas's entire application was deficient. It is the applicant's burden to set forth and articulate the claims raised by the application. In a

case such as this, where the application is a rambling, run-on list of extraordinary allegations and factual narrative, we will not require the state to decipher the issues it believes the applicant is trying to raise in its attempt to then address them. Therefore, no further notice was required for the district court to summarily dismiss Jonas's application on the grounds that were provided by the broad reasoning in the state's motion for summary dismissal.

Next, we consider Jonas's argument that she raised genuine issues of material fact that she received ineffective assistance of counsel and that her guilty plea was involuntary. According to Jonas's unverified amended application, her involuntary guilty plea claim arises from counsel's ineffectiveness. Thus, these two claims arise out of the same alleged facts and are in essence the same claim couched in different terms. A claim of ineffective assistance of counsel may properly be brought under the post-conviction procedure act. *Murray v. State*, 121 Idaho 918, 924-25, 828 P.2d 1323, 1329-30 (Ct. App. 1992). To prevail on an ineffective assistance of counsel claim, the defendant must show that the attorney's performance was deficient and that the defendant was prejudiced by the deficiency. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Hassett v. State*, 127 Idaho 313, 316, 900 P.2d 221, 224 (Ct. App. 1995). To establish a deficiency, the applicant has the burden of showing that the attorney's representation fell below an objective standard of reasonableness. *Aragon v. State*, 114 Idaho 758, 760, 760 P.2d 1174, 1176 (1988). Where, as here, the defendant was convicted upon a guilty plea, to satisfy the prejudice element, the claimant must show that there is a reasonable probability that, but for counsel's errors, he or she would not have pled guilty and would have insisted on going to trial. *Plant v. State*, 143 Idaho 758, 762, 152 P.3d 629, 633 (Ct. App. 2006). This Court has long adhered to the proposition that tactical or strategic decisions of trial counsel will not be second-guessed on appeal unless those decisions are based on inadequate preparation, ignorance of relevant law, or other shortcomings capable of objective evaluation. *Howard v. State*, 126 Idaho 231, 233, 880 P.2d 261, 263 (Ct. App. 1994).

In this case, Jonas attached to her original application for post-conviction relief copies of pro se briefs as well as a supporting affidavit from her Rule 34 motion to withdraw her guilty plea. She also argues that her testimony from the hearing on her Rule 34 motion supports her post-conviction claim for ineffective assistance of counsel. Jonas now presents a laundry list of factual allegations gleaned from those materials which, she claims, raise a genuine issue of material fact that counsel was ineffective. However, these pieces of evidence all provide the

same thing--Jonas's bare and conclusory allegations unsupported by any additional evidence. The district court is not required to accept such allegations. *See Roman*, 125 Idaho at 647, 873 P.2d at 901. Finally, Jonas argues that the district court bailiff briefly testified at the hearing on her Rule 34 motion regarding a disagreement with counsel at the change of plea hearing. This does not raise a genuine issue of material fact as to whether counsel was ineffective. Therefore, upon review of Jonas's statements, we conclude the district court did not err by summarily dismissing Jonas's claims.

### **III. CONCLUSION**

The district court did not summarily dismiss Jonas's application for post-conviction relief on grounds different than those raised by the state in its motion for summary judgment. Thus, no further notice was necessary. Jonas's application and supporting materials contained only bare and conclusory allegations which the district court was not required to accept. Therefore, the district court did not err by summarily dismissing Jonas's claims. Accordingly, the district court's order dismissing Jonas's application for post-conviction relief without an evidentiary hearing is affirmed. No costs or attorney fees are awarded on appeal.

Chief Judge LANSING and Judge GRATTON, **CONCUR.**